

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

KATHY HILTON

V.

MICHAEL J. ASTRUE,
Commissioner of Social Security

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NO. 2:07-CV-117

REPORT AND RECOMMENDATION

This matter has been referred to the United States Magistrate Judge under the standing orders of the Court for a report and recommendation regarding the Motion [Doc. 22] of plaintiff's counsel for an award of attorney's fees and expenses under the Equal Access to Justice Act ["EAJA"], 28 U.S.C. §2412(d). The defendant Commissioner has filed a Response [Doc. 23] opposing the Motion.

The plaintiff's dispositive motion was granted by Senior District Judge R. Leon Jordan [Doc. 20], and the case remanded for further consideration with very explicit instructions. According to Judge Jordan's memorandum [Doc. 19] the ALJ erred in the way he articulated his conclusions in his hearing decision. While the ALJ's opinion indicated "that plaintiff received less than a deliberate and thoughtful adjudication below," Judge Jordan stated that the case "will not require an additional administrative hearing or the taking of additional evidence." He found that "[t]he present administrative record is more than sufficient to resolve plaintiff's claim." [Doc. 19, pgs. 5-6]. Essentially, the ALJ is ordered to take the administrative record as it exists and produce a hearing decision on plaintiff's claim which satisfies the requirements of the law.

The defendant Commissioner asserts that the imprecision exhibited by the wording

of the ALJ's decision does not mean that the government's decision was not substantially justified.¹ Here, there is considerable evidence supporting the ALJ's ultimate finding on the issue of disability. The Motion merely states that the Commissioner's position was not substantially justified. More is required than this assertion. It is recommended that the plaintiff's Motion be DENIED.²

Respectfully recommended:

s/ Dennis H. Inman
United States Magistrate Judge

¹ The Court offered the plaintiff the opportunity to supplement her brief on the issue of whether the defendant's position was "substantially justified" [Doc. 24]. However, no supplemental brief was ever filed.

²Any objections to this report and recommendation must be filed within ten (10) days of its service or further appeal will be waived. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947-950 (6th Cir. 1981); 28 U.S.C. § 636(b)(1)(B) and (C).